

EXHIBIT 92
Filed Pursuant to Court's Order of
September 15, Oct. 13, 2017 and April 12,
2022

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

BRFHH SHREVEPORT, L.L.C. : CASE NO.
d/b/a UNIVERSITY : 5:15-cv-02057-EEF-MLH
HEALTH SHREVEPORT AND :
VANTAGE HEALTH PLAN, INC.:

Plaintiffs,

VERSUS

WILLIS-KNIGHTON
MEDICAL CENTER, d/b/a
WILLIS-KNIGHTON HEALTH
SYSTEM

Defendant

JUDGE ELIZABETH E. FOOTE

MAG. JUDGE MARK L. HORNSBY

- ATTORNEYS' EYES ONLY -

VIDEO DEPOSITION OF THOMAS H. COCHRAN
October 16, 2017
Volume II

Reported by:
Karen Tyler, CCR(LA), CSR(TX), TCRR, CRR, CRC
Registered Diplomate Reporter
Notary Public

1 Q. About getting the termination notice?

2 A. Right.

3 Q. Did you talk with Mr. Gavin at all about what
4 he ought to say to Mr. Fernandez in that call?

5 A. We had, you know, in any negotiation, we had
6 discussions about our -- what we're going to ask for,
7 if that's what you're asking me.

8 Q. Well, what, then, did you talk about in terms
9 of what you should ask for?

10 MR. COLLIER: Objection. Form.

11 Q. (By Mr. Kelly) And, again, this is with
12 Mr. Gavin.

13 A. So -- I'm sorry. Your question is?

14 Q. Sure. What did you and Mr. Gavin talk about
15 in terms you should asking for from Humana in the 2015
16 amendment before he spoke with Mr. Fernandez?

17 A. I -- usually we try to get a █ percent
18 increase, and usually we try not to go over a two-year
19 agreement.

20 And I -- I couldn't tell you what the
21 specifics were, it was so long ago, but that was --
22 that was just typical contract discussions.

23 Q. Did you and Mr. Gavin talk at all about the
24 idea of asking for an increase in the shared savings
25 percentage?

1 A. Yes. Mr. Gavin was adamant that we needed to²¹⁵
2 get ■ percent, I believe was the amount.

3 Q. What did he say about that?

4 A. He just said we need to get ■ percent of
5 the, you know, that they're getting paid, and they're
6 getting paid their money right off the top. And so,
7 you know, we need to collect ours and so that we
8 can -- because we don't make a lot of money off of --
9 actually, I don't even know if we make any money off
10 Medicare subscribers.

11 Q. And by "Medicare" you mean Medicare Advantage
12 subscribers?

13 A. No -- well, by Medicare. They're really
14 synonymous. The rate of pay is the same; the QAD is
15 the same.

16 Q. Got it. Did you and Mr. Gavin talk at all
17 about what the Network could offer Humana in order to
18 get the ■ percent level?

19 A. We -- we do, but we -- but we talk about with
20 every payor that we offer a very robust network of
21 physicians, specifically primary care physicians.

22 Q. Did you talk at all about -- about the fact
23 that you were contracting exclusively with -- with
24 Humana for Medicare Advantage?

25 A. You know, we -- we did -- I'm not -- we did

1 discuss contracting exclusively, but we -- we didn't²¹⁶
2 really contract exclusively. We just -- I don't think
3 we really -- at that time, we're talking about what
4 year?

5 Q. This is 2015; so --

6 A. There wasn't a lot of play in this market
7 with regard to Medicare Advantage plans.

8 Q. Did you have a contract with -- with anybody
9 for Medicare Advantage besides Humana at that time?

10 A. Well, we didn't think we did. We thought,
11 honestly, that we just -- just had the Humana
12 contract, and then there was -- the dynamics going on
13 at that time were -- Aetna was purchasing Coventry,
14 and we were renegotiating those contracts as this was
15 going on, and Coventry deemed that book -- their book
16 of business, if you will, to Aetna, and so we thought,
17 no problem.

18 And then they, for lack of a better term,
19 undeemed it -- some of it back, and I think -- well, I
20 don't think, I now know, it had a Medicare Advantage
21 plan in it, though it wasn't an actively marketed
22 plan. But that was -- that was their plan is to start
23 marketing it.

24 And so I would say while I don't think we had
25 an exclusive arrangement, it worked out that way; but,

1 in essence, we didn't.

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2 Q. Was there anybody besides Coventry that the
3 Network had a contract with for Medicare Advantage at
4 that time?

5 MR. COLLIER: 2014?

6 MR. KELLY: This is 2015.

7 MR. COLLIER: Okay.

8 MR. KELLY: April 2015.

9 MR. COLLIER: I just wanted the record to be
10 clear.

11 MR. KELLY: Thanks.

12 MR. COLLIER: Sure.

13 A. You know, our contract with UnitedHealthcare
14 was an all -- all-product line. So -- I think all
15 product except for maybe some type of auto -- I don't
16 ever contract -- some of these companies have like an
17 auto liability-type plan. Y'all attorneys might be
18 more familiar with it than me. But it's where, you
19 know, somebody gets in a wreck -- we don't do that.
20 So it was all product except for that. And I think
21 United had -- had a Medicare Advantage plan, I think.
22 I know they had the ability to have one, whether they
23 did or not, I don't know.

24 Q. (By Mr. Kelly) when -- when did
25 Willis-Knighton or the Network first contract with

1 UnitedHealthCare for Medicare Advantage?

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2 A. Well, we've -- that's what I'm saying. It's
3 always -- I think it's -- we have a contract, it's
4 kind of like a general contract.

5 Q. Uh-huh.

6 A. And they can -- we just contract with the
7 insurance company, and then the insurance company
8 brings their products to the -- to the market per se.
9 And we get one rate across the board except for the --
10 you know, except for -- we either get a commercial
11 rate or we get a Medicare or a Medicaid rate. Those
12 are our three rates. Or workers' comp in one case.

13 Q. Now, before Mr. Gavin spoke with -- with
14 Mr. Fernandez -- and this, again, is in late March or
15 early April of 2015 -- did you and he talk about
16 whether Mr. Gavin should tell Mr. Fernandez that eight
17 out of ten patients in Shreveport go to a
18 willis-Knighton doctor?

19 A. Say that again, please?

20 Q. Sure. Did you and Mr. Gavin talk -- before
21 he talked with Mr. Fernandez, did you and Mr. Gavin
22 talk about whether he should tell Mr. Fernandez that
23 eight out of ten patients in Shreveport go to see a
24 willis-Knighton doctor?

25 A. I don't recall telling Mr. Gavin that eight

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1 took you up to ■ percent, and all of a sudden the
2 Network started retaining the shared savings instead
3 of passing it along to the physicians, Humana would
4 have a gripe. Wouldn't they?

5 MR. COLLIER: Objection. Form.

6 A. Can we use another example?

7 Q. (By Mr. Kelly) Sure.

8 A. Because as I said earlier, I don't recall
9 what 1 and 2 were about --

10 Q. Okay.

11 A. -- that you said we'd get to in a minute,
12 but -- so maybe we could use your example with one of
13 these others?

14 Q. Sure. Well, what about number 6:
15 Exclusivity of Humana. I mean, at that time you
16 thought that Humana was the only plan that you had a
17 contract with for Medicare Advantage; right?

18 A. Yes.

19 Q. Coventry hadn't come back to you yet and
20 said -- and reminded you that they --

21 A. Correct.

22 Q. -- thought they had that contract. So you
23 tell them this as a justification for redistributing
24 the percentage. They agree, and they increase it.
25 And then the next day, you sign contracts with -- with

1 Did you talk with him about the alternative²⁷¹
2 language that he suggested in his email to you on
3 July 1st?

4 A. I would think so.

5 Q. Did you tell him that that language didn't
6 work?

7 A. Probably.

8 Q. Did you tell him why?

9 A. I probably reiterated that. We told him back
10 here why.

11 Q. Did you say anything to him in the call
12 about -- about the Network's contract with Coventry
13 for Medicare Advantage being a problem?

14 MR. COLLIER: Objection. Form.

15 A. Please ask again?

16 Q. (By Mr. Kelly) Sure. In this call that you
17 had with Mr. Blaylock, did you mention
18 Willis-Knighton's -- excuse me. The Network's
19 contract with Coventry for Medicare Advantage?

20 A. I don't know if I did in this one or not. I
21 have -- I did have those conversations with him.

22 Q. And when you had that conversation with him
23 about Coventry, was -- did you tell him that that
24 contract was the reason why you couldn't have
25 exclusivity language in the 2015 amendment?

1 MR. COLLIER: Objection. Form.

2 A. I don't know when I told him about that, but
3 I know I went to great pains to make sure -- I mean, I
4 didn't know that we -- I didn't realize that we had
5 that -- that Coventry had that product and that we had
6 that in our contract, and I didn't want to lie to the
7 man.

8 And somebody said -- I don't remember who --
9 somebody said maybe, you know, just don't tell them.
10 And I said, well, Aetna is going to be buying -- you
11 know, they're trying to purchase Coventry, and they'll
12 find out. And that's not how I want to be thought of
13 in this business. And ultimately that's when we came
14 up with the gentlemen's agreement; so.

15 Q. (By Mr. Kelly) who told you not to tell
16 Mr. Blaylock about the Coventry agreement?

17 A. I think it was just a discussion point, maybe
18 with Jared and Mr. Gavin. It wasn't a -- I don't
19 think it was a "don't tell them." It was just a
20 here's -- here's -- you know, here's an option. Just
21 that kind of deal. But it wasn't an option.

22 Q. Right. And ultimately you did tell them
23 about Coventry.

24 A. Absolutely. Absolutely.

25 Q. Did -- what did Mr. Blaylock have to say in

1 Q. I think you'll see that the emails follow in²⁸¹
2 the same -- the same chain that we've been looking at.
3 And I'm boring you, I know. I'm sorry.

4 A. No. No.

5 Q. It happens. Does it look like this is --
6 like 1054 is a further email from Mr. Blaylock to you
7 in this chain on July 7th?

8 A. Yes.

9 Q. And just below Mr. Blaylock's email, towards
10 the bottom of the first page, there's an email from
11 you to Mr. Blaylock dated July 6th of 2015?

12 A. Yes.

13 Q. And -- and there you mention, the second
14 paragraph, that there doesn't seem to be a reference
15 to a carve-out for Coventry? I beg your pardon. It
16 doesn't specifically mention Coventry. Does it? You
17 say, "I do not see where there was a concession to
18 existing or 'grandfathered' in Medicare Advantage
19 contracts like we discussed last week."

20 Do you see that there?

21 MR. COLLIER: Objection. Form.

22 A. I do.

23 Q. (By Mr. Kelly) were you talking about the
24 Coventry contract right there?

25 MR. COLLIER: Objection. Form.

1 A. I don't know. But I was definitely talking ²⁸²
2 about -- what it says. I do not see where there was a
3 concession to existing or grandfathered in Medicare
4 Advantage contracts like we discussed last week; so.

5 Q. (By Mr. Kelly) And, in response,
6 Mr. Blaylock says, "I have added language that allows
7 for the exclusion of your Aetna/Coventry contract from
8 calculation of number of health plans in determination
9 of shared savings allocation percentage."

10 Do you see that there?

11 A. I do.

12 Q. And if we flip to 1055, the draft agreement
13 that is attached --

14 A. Okay.

15 Q. -- to it. Yeah. 1055. If you look at the
16 second page, you'll see that in addition to the added
17 paragraph for LSU, there's now a paragraph (e) that
18 says, "Humana agrees that any contracts with
19 Aetna/Coventry for Medicare Advantage lines of
20 business prior to the effective date of this agreement
21 will be grandfathered in and not considered in the
22 determination of the number of health plans contracted
23 in determining the shared savings allocation
24 percentage as defined above."

25 Do you see that there?

1 A. I did.

2 Q. Did you -- did you send this draft on to --

3 MR. COLLIER: Hold on a second. Are you
4 looking at another document? Do you need to look at
5 something to finish answering or are you done with
6 your answer?

7 THE WITNESS: I was trying to find -- I was
8 trying to find -- I thought I had -- somewhere in all
9 this paperwork, I thought I had seen the final
10 agreement, because I don't know if this is it or not.

11 Q. (By Mr. Kelly) 1040 -- yeah. I'm not
12 asking -- I'm not even suggesting that that's the
13 final agreement, for sure. The very first exhibit we
14 looked at today, which I think you reminded me was
15 1040, is the final agreement. We started with that.

16 So it's probably -- it's shuffled in there
17 somewhere. I'm pretty sure. There you go.

18 A. That's the final agreement.

19 Q. Right. So let me show you --

20 MR. COLLIER: Well --

21 MR. KELLY: Yeah.

22 MR. COLLIER: -- hold on. I'm not certain --
23 I want to be very respectful of your time, so I just
24 want to ask -- was your answer done, or when he tells
25 you he understands that what he asked about was a

1 draft and not the final agreement, is that what you ²⁸⁴
2 were trying to tell him?

3 A. I'm not even sure what the question was.

4 Q. (By Mr. Kelly) Oh, I think -- actually the
5 question was pretty clear. I was just asking if you
6 saw there on the second page there was an additional
7 edit from Mr. Blaylock adding the LSU carve-out.

8 A. Yes. I see that edit, yes, sir.

9 Q. You see that --

10 MR. COLLIER: In Exhibit 1049.

11 MR. KELLY: I'm sorry. And you know what?

12 And in my hurry --

13 MR. COLLIER: 1055.

14 MR. KELLY: -- I just blew it. I meant
15 whether you saw the additional paragraph --

16 MR. COLLIER: Or 1055. Sorry.

17 THE WITNESS: 1055.

18 MR. KELLY: Now we're stepping on each
19 other's time. Boy, wait until you see what I do.

20 Q. (By Mr. Kelly) what I meant to ask was
21 whether, in fact, you saw that there was an additional
22 paragraph, this time around, with the carve-out for
23 Coventry.

24 A. Yes. I see that.

25 Q. Okay. Great. Now I want to show you

1 A. Definitely.

2 Q. Let me ask that question again. I didn't ask
3 it right.

4 As we sit here today, has willis-Knighton
5 Physician Network entered into contracts with other
6 Medicare payors other than Humana?

7 A. Yes. If I'm understanding the question
8 right. Have we contracted with other Medicare --

9 Q. Advantage payors.

10 A. Absolutely.

11 Q. And who would they be?

12 A. We've got Aetna/Coventry, we've got Humana,
13 we've got UnitedHealthcare. I don't think CIGNA has
14 that product here. There's one more, I believe. I
15 just don't remember the name of it right now.

16 Q. Okay. And despite contracting with other
17 Medicare Advantage payors, including Aetna/Coventry
18 and UnitedHealthcare and the one whose name you can't
19 remember now, what is the agreed shared savings
20 percentage between willis-Knighton and Humana?

21 A. ■ percent.

22 MR. COLLIER: Pass the witness.

23 EXAMINATION

24 BY MR. KELLY:

25 Q. Do you remember when the Network entered into

1 a contract with UnitedHealthcare that covered Medicare²⁸⁹
2 Advantage?

3 A. Probably -- I think we're in year one of a
4 three-year agreement.

5 Q. So it's within the last year.

6 A. I think so.

7 Q. Okay. And has -- has Willis-Knighton signed
8 a contract with Aetna itself to cover Medicare
9 Advantage?

10 A. We -- that's on a two-year agreement. And
11 that contract doesn't come up for renewal until June,
12 I think, of 2018.

13 Q. So it hasn't signed a contract with Aetna
14 itself for Medicare Advantage. Has it?

15 MR. COLLIER: Objection. Form.

16 A. I want to say that -- kind of like we didn't
17 know it was in Coventry, I couldn't swear to you if
18 it's -- under oath, whether it's -- they have that
19 ability or not. But I can tell you -- I can swear
20 under oath that that was a two-year agreement, and
21 that it doesn't come up for renewal until, I think
22 it's June, and I know it's of 2018.

23 Q. (By Mr. Kelly) Now, Aetna tried to get you
24 to agree that it could take advantage of the Coventry
25 Medicare Advantage contract in the fall of 2015.

1 Didn't it?

2 A. What do you mean by "take advantage of"?

3 Q. They tried to deem --

4 A. They did deem it.

5 Q. They did.

6 A. Yes, sir. And then they undeemed it.

7 Q. And you resisted it -- didn't you? -- when
8 they tried to deem it?

9 MR. COLLIER: Objection. Form.

10 A. Yeah. I resisted it, because I feel like I
11 had violated my, you know, contract.

12 Q. (By Mr. Kelly) What did -- what did you
13 violate?

14 A. Well, I felt like they had -- repeat your
15 question one more time?

16 Q. You said you felt like you had violated your
17 contract, and I asked what contract did you violate?

18 A. Well, we had a gentlemen's agreement. I
19 violated my word. Maybe that would be a better way to
20 say that. And I don't want to do that. I didn't want
21 to do that. And so I corrected it.

22 Q. The gentlemen's agreement with Humana?

23 A. (Nods head, yes.)

24 Q. Let me show you what's been marked as
25 Exhibit 1059.

1 (Cochran Deposition Exhibit No. 1059 was
2 marked for identification.)

3 Q. You'll see that the exhibit consists of two
4 emails: One between -- from you to Jackie Longman on
5 Friday, October 16th, 2015, and then a reply from
6 Ms. Longman to you and Mr. Gavin with a copy to
7 Mr. Beville on October 28th of 2015.

8 A. Right.

9 Q. Did you receive those emails?

10 A. I do.

11 Q. Do you remember those emails?

12 A. I do.

13 Q. Let me ask you about your email to
14 Ms. Longman. Did you write this email?

15 A. I did.

16 Q. Did you run it by anyone before sending it to
17 Ms. Longman?

18 MR. COLLIER: Objection. Form.

19 A. I mean, I don't usually -- I don't usually
20 run my emails by anybody. I mean, we might have
21 discussions ahead of time and then I, you know, write
22 what I write and hopefully either get it right or take
23 my lumps.

24 Q. (By Mr. Kelly) well, I'm wondering did you
25 show this email to Mr. Beville before you sent it to

1 Ms. Longman?

2 A. I don't think I did.

3 Q. Or Mr. -- or did you show it to Mr. Gavin?

4 A. Again, I don't -- I don't think I did. I
5 typically don't -- I mean, you'd never get anything
6 done if you said, here, proofread this.

7 Q. In the first paragraph, you say, "As we have
8 discussed, the Willis-Knighton Physician Network is
9 not currently in a position to contract with another
10 Medicare Advantage plan. To do so would jeopardize
11 our contractual relationship with another payor. I'm
12 certain you can understand that and would expect us to
13 honor it if the shoe was on the other foot, so to
14 speak."

15 Do you see that there?

16 A. I do.

17 Q. The other Medicare Advantage plan that you're
18 referring to is Humana; is that right?

19 MR. COLLIER: Objection. Form.

20 Q. (By Mr. Kelly) I'm sorry. The other payor?

21 MR. COLLIER: Objection. Form.

22 Q. (By Mr. Kelly) Let me be clearer. I can do
23 a better job.

24 MR. KELLY: Thank you, Marc.

25 Q. (By Mr. Kelly) In the second sentence of

1 that paragraph when you say "To do so would jeopardize²⁹³
2 our contractual relationship with another payor," is
3 the "another payor" that you're referring to there
4 Humana?

5 A. I would probably -- I would say yes.

6 Q. And the contractual relationship you're
7 talking about is the gentlemen's agreement?

8 MR. COLLIER: Objection. Form.

9 A. I don't know about that. No, I don't think
10 that would be -- I don't think that would be the case.
11 Because a gentlemen's agreement is not a
12 contractual --

13 Q. (By Mr. Kelly) Okay. Well, let's take a
14 look at Exhibit 1040, the signed 2015 amendment, if we
15 could. And what I want to know is do you see
16 anything in there that -- that entering into a
17 contract with Aetna for Medicare Advantage, anything
18 in there that an Aetna contract for Medicare Advantage
19 would violate?

20 MR. COLLIER: Objection. Form.

21 A. Are you asking me if I see anything in this
22 Exhibit 1040 that would violate --

23 Q. (By Mr. Kelly) That would be violated by
24 your entering into a Medicare Advantage contract with
25 Aetna.

1 A. Okay. So you're --

2 MR. COLLIER: I'm going to object to the
3 form. Calls for a legal conclusion. But you can
4 answer to the extent of your knowledge.

5 A. So you're asking me, just so I'm clear, if
6 there's any -- if I contracted with Aetna, is there --
7 would it violate anything in this agreement. This
8 Exhibit 1040; is that right?

9 Q. (By Mr. Kelly) Yeah. But I think I'm going
10 to withdraw the question, since I'm running out of
11 time.

12 Let me instead ask you to take a look at
13 Exhibit 1058, in the little bit of time we have left.

14 (Cochran Deposition Exhibit No. 1058 was
15 marked for identification.)

16 Q. And all I'd like to ask you is whether you
17 recognize it and who wrote the material that you see
18 in the lower half of page -- with the heading Meeting
19 Objectives, Contractual Discussions.

20 (Document(s) reviewed by the witness.)

21 A. Okay.

22 Q. Who wrote that material?

23 A. Me.

24 Q. Did you run it by anybody else?

25 MR. PUGH: Clock is up.